



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/171364

PRELIMINARY RECITALS

Pursuant to a petition filed January 11, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to FoodShare benefits (FS), a hearing was held on February 08, 2016, at Green Bay, Wisconsin.

The issue for determination is whether the agency erred in its termination of petitioner's FS based on a claim of IPV.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.

2. On 10/15/15 the Brown County Sherriff's office sent notice of a Fraud Ordinance Citation which indicates that if petitioner is found guilty at a court hearing or enters a no contest plea then the FS benefits can be sanctioned.
3. The agency proceeded to the circuit court hearing on the ordinance violation of Brown County Code § 30.05 on December 17, 2015. Petitioner did not appear. Default judgment of guilty was entered by the circuit court.
4. On 12/21/15 the agency sent a notice to petitioner indicating that FS would terminate effective 2/1/16 due to a finding of an intentional program violation (IPV).
5. Petitioner appealed.
6. On 2/11/15, petitioner appeared in circuit court at which time petitioner explained that the failure to appear was due to no receipt of the notice or summons. The circuit court vacated the judgment and the case is pending.

DISCUSSION

7 C.F.R. §273.16(b) provides as follows:

(1) Individuals found to have committed an intentional Program violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:

(i) For a period of twelve months for the first intentional Program violation....

Similarly, the Department's FS Handbook, §3.14.1, provides:

An IPV may be determined by the following means:

1. Federal, state, or local court order,
2. Administrative Disqualification Hearing (ADH) decision,
3. Pre-charge or pretrial diversion agreement initiated by a local district attorney and signed by the FoodShare recipient in accordance with federal requirements, or
4. Waiver of the right to an ADH signed by the FoodShare recipient in accordance with federal requirements.

The definition of an IPV is found at 7 C.F.R. §273.16(c):

Intentional Program violations shall consist of having intentionally:

(1) Made a false or misleading statement, or misrepresented, concealed or withheld facts;
or

(2) Committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).

If the agency files an ADH, the person must be notified at least 30 days before the hearing and have the opportunity to defend the charge. 7 C.F.R. §273.16(e)(3). The agency must prove the IPV by clear and convincing evidence. 7 C.F.R. §273.16(e)(6). If the person fails to appear for the ADH, the agency still

must present its evidence to the administrative law judge, and the judge must determine if the IPV was committed based on clear and convincing evidence. 7 C.F.R. §273.16(e)(4).

The issue in this case is whether the finding of guilty of an ordinance violation on a default, no contest verdict is sufficient to warrant disqualification from the FS program. I conclude that it does not.

The agency did not show to the tribunal, by clear and convincing evidence, that the petitioner committed an IPV. Because petitioner did not appear at the ordinance citation hearing, she was found guilty with no additional proceeding. It contradicts the requirements of the 7 C.F.R. §273.16 that a person can be disqualified from the FS program with no showing by clear and convincing evidence (or a higher level of proof) that an IPV occurred. If a recipient fails to appear for an administrative disqualification hearing (ADH), the agency still must convince an administrative law judge that an IPV occurred. It makes no sense that the burden would be so high on an administrative tribunal with experience in handling ADHs, but that no such burden would be required before a local court that likely has little or no working knowledge of FS IPV procedures.

Furthermore, the judgment has since been vacated by the circuit court and thus the only basis for the agency's IPV finding has been negated.

This decision does not prevent the OIG from moving forward with an IPV action against petitioner at which time the agency could attempt to meet its burden before an administrative law judge.

CONCLUSIONS OF LAW

1. A default judgment finding petitioner guilty of violating a Brown County welfare fraud ordinance is insufficient to impose an IPV sanction because there was no showing by clear and convincing evidence to the Brown County court that petitioner committed an IPV before the court imposed the guilty finding.
2. The court judgment has been vacated and there is now no basis for the IPV.

THEREFORE, it is

ORDERED

That the matter be remanded to the Department and its county agent with instructions to rescind the one-year IPV sanction against petitioner, to reinstate FS retroactively to the date of termination, and to issue any supplemental FS appropriate retroactive to the termination date. These actions must be completed within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 3rd day of March, 2016

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 3, 2016.

Brown County Human Services
Division of Health Care Access and Accountability